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13-12038

BEFORE THE

Congress of the United States.

IN THE MATTER OF

JOHN C. BIRDSELL, PETITIONER,

FOR AN

*Act authorizing the Commissioner of Patents to
hear and determine his Application for
Extension of his Letters-Patent for*

MACHINERY FOR HULLING AND THRESHING CLOVER.

AFFIDAVITS IN SUPPORT of the PETITION.

Thomas McGill & Co., Printers, Washington, D. C.



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a.d.s. April 24th

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF INDIANA, *County of St. Joseph, ss:*

Before me, a notary public in and for said State and county, personally appeared J. Benjamin Birdsell, and being by me duly sworn, deposes and says: That he has been for many years the book-keeper and the treasurer of the Birdsell Manufacturing Company of South Bend, Indiana; that he is a son of the petitioner, John C. Birdsell, and has been engaged constantly in the business with his father since before the war and to the present time; that he assisted in preparing the statement of receipts and expenditures embraced in the petition of the said John C. Birdsell, and believes it to be correct and true in all essential respects and particulars, having been prepared, as far as possible, from such books and data in their possession as have not been destroyed by fire or lost, as set forth in the said statement; but, where other items have been estimated, he believes the estimates to be substantially correct, and that the final summary is substantially accurate, and shows the proper indebtedness of the patent to the petitioner.

In the Ohio suits between John C. Birdsell and the Ashland Machine Company, and against McDonald & Co., the defendants frequently boasted that they would crush Mr. Birdsell with money, and oblige him to give up, and that they would then have the field to themselves. To this end they expended large sums of money to elaborate their defense, and extended their research and investigations all over the country. The said defendants, and others of the combination that contributed to the defense, were reputed to be very wealthy, and unquestionably expended much more in the defense than Mr. Birdsell did in the prosecution, for both said companies failed before final decree, as did also the Glen & Hall Manufacturing Company of Rochester; and all the others of the said combination made overtures to settle rather than to longer contest the suits.

The great mass of the infringing machines have been made and put upon the market since the extension of the patent in 1872, after a severe contest in the Patent Office with the very parties who afterwards made and sold the machines. They were, therefore, all fully advised of the rights secured to John C. Birdsell by the patent, and their infringement was willful and deliberate. Moreover, as far as we have been able to discover, all of the said infringing machines were sold with guarantees against liability to the Birdsell patent, so that the parties who purchased did so with due notice of Mr. Birdsell's rights, and have their redress against their guarantors. The Birdsell machines are, by all odds, the best machines in the market, not a single one having ever been returned to the company as unsatisfactory, though fully warranted.

J. B. BIRDSSELL.

Subscribed and sworn to before me, this 18th day of January, 1878.

[L. s.]

O. B. MAPLES,
Notary Public.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Threshing and Hulling Clover.

STATE OF INDIANA, *County of St. Joseph, ss:*

Before me, a notary public in and for said State and county, personally appeared Byron A. Birdsell, and being by me duly sworn, he deposes and says: I reside at South Bend, Indiana; am a son of the petitioner; am thirty years of age, and my occupation is General Superintendent of the Birdsell Manufacturing Company. I have, during my whole life, since I was able to do work, been engaged with my father in the clover-machine business. I have carefully perused the statement subscribed by him, and accompanying his said petition to Congress; and, because of my great familiarity with the business in all its details and with its past history, I believe the statements therein contained to be correct and true.

Deponent also says, that the business has been so interfered with by infringers, that the said John C. Birdsell and the company have not been able to realize anything from the said letters-patent; that this has been particularly true during the term of the extension since 1872, in the whole of which period the action of infringers was redoubled; and, having established a combination amongst themselves to contribute to the defense of all suits brought against its members, the litigation against them was exhausting in the extreme, and involved our company in enormous sums to carry the suits to a successful issue. The market is now left flooded with infringing machines, which to that extent destroys the market for our own. Deponent believes that if the said patent is extended, the said petitioner can realize a fair remuneration for his invention, and for his time, ingenuity, and expense bestowed upon it, and its introduction into public use. The financial crisis of the past three years has likewise greatly embarrassed our company, as it has all manufacturing establishments.

The defendants in the Ohio cases of *John C. Birdsell v. McDonald & Co.*, and against the Ashland Machine Company, must have expended a very much greater sum of money in defending the said suits, than did John C. Birdsell in prosecuting them; for although the defendants boasted of

their money-power to crush Mr. Birdsell out of existence or into submission, yet, before final decree was obtained, both said companies, together with the Glen & Hall Manufacturing Company, a contributor to the defense, failed with very great liabilities, amounting, in the aggregate, to about a million dollars, more or less.

The infringing machines in the market have nearly all been made and sold since the date of the extension in 1872, and by the same parties who at that time combined to oppose the extension. They were, therefore, made and sold with a full knowledge of John C. Birdsell's rights in the premises, but with the expectation that they could use him up with money.

So far, also, as we can ascertain, all such machines were sold with an express guarantee against the Birdsell patent. The purchasers, therefore, purchased with their eyes open, and have their recourse against their guarantors, and have no just ground for complaint. Moreover, our machines were always in the open market, and were admitted to be superior to any other machine ; a fact attested by the circumstance that not a single one of the Birdsell machines were ever returned as unsatisfactory, although fully warranted.

BYRON A. BIRDSSELL.

Subscribed and sworn to before me, this 18th day of January, A. D. 1878.

O. B. MAPLES,
Notary Public.

[L. S.]

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF INDIANA, *County of St. Joseph, ss:*

Before me, a notary public in and for said State and county, personally appeared Edwin St. John, and being by me duly sworn, deposes and says: I reside at South Bend, Indiana; am forty-one years of age, and am by occupation millwright. I formerly resided at Henrietta, New York. I am acquainted with the petitioner, John C. Birdsell; am familiar with the invention described in his letters-patent, reissue No. 1299, sought to be extended; was familiar also with the state of the art of getting out clover-seed, as it existed prior to the time of his said invention. Mr. Birdsell's invention marked a grand stride in the art—a great departure from what had before been done. Mr. Birdsell's machine was designed to take the clover on the straw and thresh the heads from it, separate the heads from the stems, hull the seeds from the heads, and clean and gather the seed—all in one single, continuous operation.

Before that time, the getting out of the seed required several distinct operations and several handlings of the material, which, by consuming time and requiring great labor, added largely to the cost of the seed in the market. Clover was generally gathered by stripping the heads from the straw in the field, so as to leave the straw standing. The heads were then subjected to the trampling of horses, or to the action of flails, in order to hull out the seed. The mass was then raked, to remove the larger straws, and the smaller ones were separated by passing the mass through a bolt, and the seed afterwards gathered and cleaned in a fanning-mill. Or, as was sometimes the case, the clover would be gathered on the long straw, then the whole put through an ordinary grain-thresher to thresh the heads therefrom and to separate the heads from the straw. The mass would then be raked, to remove the longer stems that remained with the heads and chaff, and then it would be bolted, to separate such stems as eluded the raking process. The chaff would then be shoveled several times through a hulling-machine, in order to hull the

seed from the bolts. Both processes required much handling—the first also entailed much loss of seed in stripping, and by imperfect trampling or flailing. The latter process likewise wasted much seed in unthreshed heads, passed out with the straw to the stack.

I am aware of the fact that Mr. Birdsell has labored against the greatest embarrassments ever since the grant of his letters-patent. The financial crisis of 1857-'58, followed by the war, both served to paralyze his business, as it did also nearly every other agricultural interest in the country. After the war, and until 1867 and 1868, the chief agricultural product was grain, and not clover. Having been unable to derive remuneration for his invention, Mr. Birdsell applied for an extension of his patent in 1872. There being great opposition by infringers, he was obliged to expend large sums of money before he could secure the extension. This crippled him greatly at the beginning of his extension, and the action of the infringers thereafter, necessitating very many suits at law and equity, and the expenditure of enormous sums on his part, and extending during every moment of his whole extended term, kept him constantly in debt, and obliged him to proceed against the greatest odds.

Coupled with these difficulties, during his extended term, has been the recent financial crisis, beginning with the failure of Jay Cooke & Co., which almost utterly destroyed manufacturing interests throughout the country. And, from my knowledge of his affairs and the general expressions of the community in which he has been doing business, I know that, instead of deriving profit from his invention, he has been constantly laboring against large indebtedness, created by his efforts to maintain his rights under his patent, and that, until the last two seasons, he had realized no benefit from his invention. The feeling in our community was so sympathetic towards him, owing to his energy and perseverance in defending his rights against a coalition of infringers, and in the face of enormous indebtedness, that at the time he obtained decrees in Ohio sustaining his patent and establishing his rights under it, the telegraphic news to that effect was sent by the operator to all the manufacturing establishments at South Bend, Ind., and they simultaneously blewed their whistles and rang their bells for a space of half an hour.

Mr. Birdsell's invention has affected the whole country. It reduced the cost of getting out clover-seed from one to two dollars per bushel, thus bringing clover-seed within the reach of all—rich and poor alike. It also established a

clover-seed-producing industry, which did not before exist because of the previous high price of seed which greatly limited the number of consumers. It put within ready reach of all, the means for enriching and maintaining their soil at slight expense, it being customary to turn under, for this purpose, a crop of clover about once in three or five years. Wherever clover-seed is raised in the United States, Mr. Birdsell's invention, as manifested in the combined clover-machines, is an absolute necessity at the present day.

Moreover, the invention has so completely revolutionized the art of getting out clover-seed, that none of the old appliances can now be found anywhere in the country.

Deponent also says, that the defendants in Mr. Birdsell's Ohio cases must have expended much greater sums in defending themselves than did Mr. Birdsell in the prosecution, for, while the said defendants and their co-contributors were reputed to be very wealthy corporations, the said McDonald & Co. of Wooster, Ohio, the Ashland Machine Co. of Ashland, Ohio, and the Glen & Hall Manufacturing Co. of Rochester, New York, all failed and made assignments before the said Ohio suits were finally decided in Mr. Birdsell's favor.

EDWIN R. ST. JOHN.

Subscribed and sworn to before me, this 18th day of January, A. D. 1878.

O. B. MAPLES,

Notary Public.

[L. S.]

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF INDIANA, *County of St. Joseph, ss:*

Before me, a notary public in and for said State and county, personally appeared George V. Glover, who being by me duly sworn, deposes and says: I am a resident of South Bend; am forty-eight years of age, and by occupation ex-sheriff of St. Joseph county, now retired. I am acquainted with the petitioner, John C. Birdsell, and have known him intimately for eighteen years past. I am also familiar with his invention in clover-hullers, secured to him by letters-patent, reissue No. 1299, for machine for hulling and threshing clover, and with the prior state of the art. Before Mr. Birdsell's invention, there was no machine in existence that would take clover on the straw, thresh the heads therefrom, separate the heads from the stems, and while the straw was conveyed away pass the heads through a hulling device that would hull out the seed, and then clean the seed and blow out the chaff—all at one operation. But, on the contrary, the plans employed before Mr. Birdsell's invention was to gather the heads from the stems in the field by a stripper, or by a cradle, made to cut high, and being so covered with canvas as to catch the heads as they were severed from the stems. It was then taken to a barn, spread upon the floor, and the seed separated or hulled out by threshing with flails or by the trampling of horses, etc. It was then gathered up, and cleaned by passing it through an ordinary fanning-mill. Or, if the clover, hay and all, was first cut in the field, it was afterwards passed through an ordinary grain threshing-machine, which threshed the heads from the straw, though much seed passed over to the stack with the straw and was wasted. The heads were then shoveled up and passed through a bolt, in order to separate such short straw from the chaff as was not readily raked therefrom. The heads and chaff were then shoveled up and put through a huller to hull the seeds from the pods, and it was generally necessary to shovel back, so as to pass the chaff several times through the machine.

Mr. Birdsell's invention was a radical departure from

what had been done before; and inasmuch as it took the clover on the long straw, and in a single passage through the machine, and at one single handling did all that had been before done with several handlings and the employment of two or more machines, the cost of getting out the seed was immediately reduced from one to two dollars per bushel; and, inasmuch as the work was all done at one operation and in one passage through the machine, the work could be done in the field.

This completely revolutionized the clover-seed interest in the United States. It so reduced the cost of the seed in the market that ordinary farmers could afford to purchase it for the purpose of turning under a clover crop to enrich the soil. Moreover, the producer could sell his seed with as great profit to himself, though at a much lower price. He was enabled to reach customers who prior to that time were not consumers, because of the former high price of seed. The producer, therefore, could raise and dispose of a much larger crop of seed. Moreover, the machine would do the same amount of work in a single day that before required four or five days. Consequently one machine, like a grain-thresher, could do the work for a whole neighborhood.

This machine of Mr. Birdsell's was denominated the *combined* machine, because it would thresh, hull, and clean the clover at one operation. The combined clover-machine soon became an indispensable necessity; and at the present day the Birdsell machine—*i. e.*, the combined machine—is absolutely essential wherever clover-seed is raised.

This invention established a new industry, for before that time farmers generally raised and got out their own seed, as much as might be needed for their own use, while now the seed is raised in large quantities in clover districts and shipped therefrom to all parts of the world, inasmuch as the reduction in its price, created by this invention, has brought it within ready reach of all.

I am familiar with the difficulties Mr. Birdsell has encountered in endeavoring to derive remuneration from his invention; and it has been a matter of notoriety in the neighborhood where he has resided and done business that, although he has exercised good business tact and great energy and perseverance, he has throughout been greatly embarrassed: first, by the financial crisis of 1857 and 1858, which, coming in the early years of his patent, effected a general prostration of manufacturing interests throughout the country. This was

followed by the war, which destroyed this branch of agricultural interests, and the fact that grain and not clover was almost the entire crop raised after the war until 1867 and 1868. He has also lost largely by fires at several different times, both at Henrietta and South Bend.

This was succeeded by the necessity of an extension of his patent in 1872, against great opposition, and an enormous amount of expensive litigation with infringers, in order to establish his rights under his patent, extending from that time to the present.

It has also been a matter of public notoriety in his neighborhood, and well known to me, that he has for many years past been carrying a large debt, which he has incurred by the vicissitudes of his clover-huller business, and that at no time prior to the last two seasons has he been regarded as doing a living business and deriving any profit. So greatly was our community interested in his struggles against his infringers, that when he finally gained a decisive victory over them in the Northern District of Ohio, before Justice Noah H. Swayne, and the news was telegraphed to South Bend, the dispatch was sent by the operator to all the various manufacturing establishments in the city, and their whistles were blown for half an hour; there was also a display of flags and ringing of bells.

For several years past I have been intimately connected with Mr. Birdsell and his company, in the capacity of indorser, when the nature and extent of their debts became so alarming as to require the substantial support of their friends in order to escape bankruptcy. In this capacity I also assisted personally in the direction and management of their business, and became thoroughly familiar with it in all its various details and with its whole history.

While McDonald & Co. and the Ashland Machine Company, the defendants in Mr. Birdsell's Ohio cases, were taking testimony at South Bend, Indiana, I chanced to meet Angus McDonald, of said McDonald & Co., at Laporte, Indiana, and he remarked in my presence that they would crush Mr. Birdsell with money, and would law him until they used him up, and then they would have the clover-machine business all their own way; that Birdsell would eventually have to give up, as his counsel would refuse to work without pay. Deponent also knows, from the character of the defense in those cases, their counsel, and the wide field of search and inquiry, that the expenses of the defendants must have been enormous. The said McDonald & Co., before the final decree

was obtained, failed, with liabilities reported at about three-quarters of a million of dollars; and the Ashland Machine Company likewise failed before final decree, with liabilities reported at about a quarter of a million dollars. Moreover, the defendants were assisted by contributions from the Glen & Hall Manufacturing Company of Rochester, New York, and other prominent infringers. This latter firm likewise suspended and made assignment. Deponent is therefore of the opinion that, in their endeavor to crush Mr. Birdsell with money and use him up, their expenses swamped themselves instead of Birdsell.

GEO. V. GLOVER.

Subscribed and sworn to before me, this 21st day of January, A. D. 1878.

O. B. MAPLES,

[L. S]

Notary Public.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for an Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF INDIANA, *County of St. Joseph, ss:*

Before me personally appeared Thomas S. Stanfield of South Bend, Indiana, and by me, a notary public in and for said county and State, being duly sworn, deposes and says: I am sixty-one years of age, and my occupation, formerly circuit judge, now farmer. I have been well acquainted with the petitioner, John C. Birdsell, for many years past, and was aware of the fact that he was laboring constantly for many years, and until the present season of 1877, against large indebtedness, growing out of his business in the manufacture of combined clover-machines, under his letters-patent, reissue No. 1,299. In his endeavors to obtain money, at various times from 1872 down to the present time, I have indorsed his paper and made myself responsible for its payment.

These debts on the part of Mr. Birdsell have been caused principally by his being obliged to contest many expensive suits against the factors constituting a coalition of infringers, who combined with the ostensible object of defying his patent and destroying his business, so as to thwart any attempt at satisfaction that he might make against them. Mr. Birdsell is a man of good character, great energy and persistence, and had, by borrowed money and upon business credit, erected large works at South Bend, Indiana, and given employment to a great number of hands in the manufacture of clover-machines under his patent. When, therefore, it was found that he was being absolutely crushed by defiant infringers, there was a very general sentiment in our community in favor of assisting him and maintaining his business integrity until he could obtain decrees sustaining his rights. This was finally accomplished; and when he finally obtained those favorable decrees in the two test cases in the Northern District of Ohio against McDonald & Co. *et al.* and the Ashland Machine Company *et al.*, the telegraphic news of same was received at South Bend by the blowing of whistles and

ringing of bells by all the manufacturing establishments, and a general display of flags.

Having become an indorser for Mr. Birdsell, I took pains to familiarize myself with his business, and my knowledge of his business affairs satisfies me that he has not, until the last two seasons, (except a fair business for two or three years before building his new shops), been able to do anything like a fair, remunerative business; and not until the last season of 1877 has he gained a permanent business advantage over his infringers. Moreover, the machines of infringers still exist in the market, and will outlive his present term of the patent, and to that extent do now and will hereafter impair the market for his machines.

THOS. J. STANFIELD.

Subscribed and sworn to before me, this 18th day of January, A. D. 1878.

O. B. MAPLES,

[L. s.]

Notary Public.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for an Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF INDIANA, *County of St. Joseph, ss:*

Before me, a notary public in and for said State and county, personally appeared William Miller, and being by me duly sworn, he deposes and says: I am a resident of South Bend, Indiana; am 56 years of age, and by occupation a banker. Am cashier of the South Bend National Bank. In my capacity of banker I have been for many years cognizant of the fact that Mr. John C. Birdsell has been struggling against constant business adversity and financial embarrassment, and which until the past year has not been relieved. I am aware that for years his indebtedness amounted to upwards of (\$100,000) one hundred thousand dollars, caused by expenditures rendered necessary in the prosecution of his business of manufacturing combined clover-machines. I am also aware, that had it not been for the public sympathy for him and against the mass of infringers who have persistently violated his rights and defied him in the courts, and the public faith in his ability, backed by great energy and perseverance, to eventually secure his rights and meet his indebtedness, he would undoubtedly have been thrown into bankruptcy. Mr. Birdsell's greatest embarrassments have been since 1872, and extending down to the present season.

Deponent recollects the public demonstrations of approbation and encouragement extended to Mr. Birdsell at the time he obtained decrees in the Northern District of Ohio, before Justice Swayne, sustaining his patent. The different manufacturing establishments throughout the city blew their whistles and rang their bells, for half an hour, simultaneously.

Deponent is also aware that the general financial depression throughout the country for a few years past has served in a great degree to increase Mr. Birdsell's financial troubles, by general depression of trade and difficulty in realizing returns from sales.

W.M. MILLER.

Subscribed and sworn to before me, this 19th day of January, A. D. 1878.

O. B. MAPLES,

[L. s.]

Notary Public.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF NEW YORK, *County of Monroe*, ss:

Before me, a notary public in and for said State and county, personally appeared B. H. Ketchum, and being by me duly sworn, he deposes and says: I am 41 years of age; reside at West Henrietta, New York, and am by occupation farmer. I was well acquainted with John C. Birdsell at the time he procured his letters-patent for clover thresher and huller, and thereafter until he moved from Henrietta to South Bend, Indiana, in 1863 and 1864. I was also familiar with the methods employed for getting out clover-seed prior to the Birdsell patent. Before that time, clover-heads were usually gathered from the stems in the field by an instrument known as a stripper, which simply severed the heads from the stems and left the stems standing; the heads thus gathered were then spread upon a floor and subjected to the action of flails or trampling of horses until the seed was separated from the pods; the whole mass was then raked to remove the larger of the short stems, and then passed through a bolt to separate the shorter stems and unhulled heads; the mass was then again shoveled up and passed several times through a hulling-machine to get out and clean the seed. This process was very slow and tedious. Moreover, it was very expensive, because of the time and labor employed. At the same time, very much seed was wasted in the operation of stripping, and much was left in the chaff unhulled. Sometimes the clover was gathered on the straw, then put through an ordinary grain-thresher to break the heads from the stems; the heads and chaff were then raked to remove the longer of the short stems passed over with the chaff, and then passed through a bolt to clear it of the short stems; the chaff was then shoveled up and passed several times through a huller to get out and clean the seed. This process, with which I was the more familiar, like the other, entailed great loss of seed by imperfect threshing and separating, and was very expensive in time and labor required. Mr. Birdsell then devised his machine, which at one single passage through it, and in

a single continuous operation, and at one handling, would take the clover on the straw, thresh the heads therefrom, pass the straw out, but separate and carry the heads and chaff through a hulling-machine, which would hull the seed from the pods, and then, in passing over a shoe of sieves, would blow out the chaff and dust and collect the seed in clean condition and with practically no wastage of seed.

By this invention, the cost of getting out clover-seed was reduced one to two dollars per bushel; clover-seed was put into the market at a price within the reach of all; farmers could afford to sow clover-seed for the purpose of turning under, once in three or five years, to enrich their soil; others could engage in the raising of seed as a special industry, owing to the greatly-increased number of consumers.

The financial crisis of 1857 and 1858, together with the extreme difficulties he met with in his endeavors to introduce his machines, and the war breaking out in 1860 and 1861, so injured his business that he became largely involved with debt, and was consequently obliged to move West in 1863 and 1864, in the hopes of being able to establish there a business that would support him under his patent.

My personal knowledge of his affairs ceased at that time; but it has been common report amongst his old neighbors in my vicinity, for many years past, that he was having great financial difficulties, owing to infringers and the vicissitudes of his business, and was largely in debt.

Mr. Birdsell was always a man of great energy and good business abilities, and I am satisfied that his failure to derive profit from his invention has been from no fault or neglect on his own part.

B. H. KETCHUM.

Subscribed and sworn to, this 23d day of January, A. D. 1878.

[L. s.]

CHAUNCEY NASH,
Notary Public.

IN THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF INDIANA, *County of St. Joseph, ss:*

Before me, a notary public in and for St. Joseph county, State of Indiana, personally appeared Joseph W. Dongal of Ontario, county of Richland, State of Ohio, and, being duly sworn, deposes and says: That he is of the age of thirty-seven years, and by occupation a farmer and dealer in agricultural machinery; that previously he was general traveling agent for the firm of McDonald & Co. of Wooster, Ohio, who were engaged in the manufacture and sale of combined clover-separators, of a kind substantially like those manufactured by the Birdsell Manufacturing Company of South Bend, Indiana, under patents granted to John C. Birdsell; and that said combined clover-separators, so manufactured by the said McDonald & Co., were substantially the same in operation and effect; and that during the time he so acted as such general traveling agent for said McDonald & Co.—commencing with the year 1872 and ending with the year 1875—he traveled in the States of Ohio and Indiana, appointing local agents, directing and supervising their work, and assisting them in making sales of said combined clover-separators, and also in making sales himself direct to purchasers; and that in so making such appointments, directing, supervising, and assisting, and making sales direct, he learned that, almost without exception, both agents and purchasers, and intending purchasers, were fully aware and advised that John C. Birdsell and the Birdsell Manufacturing Company had published cautions, and had made threats of proceeding against users of combined clover-separators, as infringers against the patent so granted to John C. Birdsell.

Deponent further says, that the said firm of McDonald & Co. were also fully aware and advised of such cautions being published, and that the publication was generally known among agents and dealers in agricultural implements and machines, and also among professional threshers of grain and seeds; and that, to counteract the effect of such knowledge

and publication of caution, the said McDonald & Co. instructed their general and local agents to give in their name such assurances and guarantees as would disarm purchasers and intending purchasers from any fears they might have of being prosecuted for their infringements by John C. Birdsell and the Birdsell Manufacturing Company; that deponent, acting under the instructions so received from said McDonald & Co., in making sales of such combined clover-separators, did make such assurances and guarantees to purchasers thereof, and make offers of such assurances and guarantees to intending purchasers, and advised and authorized the local agents under his direction to make like assurances and guarantees.

Deponent further says, that during the last two years he was engaged with said McDonald & Co., it was a matter of frequent conversation by the members of the firm with their confidential employés that their only hope was to bankrupt John C. Birdsell and the Birdsell Manufacturing Company, which bankruptcy they expressed as being imminent, as they were informed and believed; that Angus McDonald, of the said firm of McDonald & Co., told this deponent that he had a man in the office of the Birdsell Manufacturing Company who was furnishing him with information relating to the troubles, difficulties, and matters tending to impair the credit of John C. Birdsell and the Birdsell Manufacturing Company; that said Angus McDonald claimed, from his knowledge and information so received, that the event of the failure of said John C. Birdsell and the Birdsell Manufacturing Company was not far distant.

Deponent further says, that said McDonald & Co. sold, and authorized the sale by their agents of the combined clover-separators so manufactured by them, at prices which afforded but little if any profit, wherever they came into close competition with the combined clover-separators manufactured by the Birdsell Manufacturing Company; that said McDonald & Co. also authorized, in cases of such competition, the sale of their combined clover-separators on long time—longer than other machinery and implements.

Deponent further says, that where the competition was strong, sales were made and authorized to be made to purchasers without having reference or due regard to the solvency or financial ability of such purchasers, and that such sales were made with the view of supplying the market with such combined clover-separators, so as to defeat sales of the combined clover-separators manufactured by the Birdsell

Manufacturing Company, and hold their combined clover-separators on the market exposed and unsold.

J. W. DOUGAL.

Subscribed and sworn to before me, this 24th day of January, A. D. 1878.

O. B. MAPLES,

Notary Public.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSELL, Petitioner for an Act authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF OHIO, *Williams County, ss:*

Personally appeared before me, Milton B. Plummer, a notary public in and for the said county of Williams, and as such duly authorized to administer oaths for general purposes, Abijah H. Corbitt, whose post-office address is Bryan, State of Ohio, and who, being by me duly sworn, deposes and says: That for five years last past he has been engaged in selling agricultural implements in Williams county, Ohio, and vicinity, and has had the agency during that time of the selling of the clover-huller manufactured by the Birdsell Manufacturing Company of South Bend, State of Indiana; that while engaged in selling said huller he has been met with strong competition from the Wooster huller agents, manufactured by McDonald & Co. at Wooster, Wayne county, State of Ohio, especially from one John Smith, who was first a local and then a general agent of said McDonald & Co., when the affiant would advise parties who would talk with him about the merits of the two hullers—to wit, that manufactured by McDonald & Co. and that manufactured by the Birdsell Manufacturing Company—that the said McDonald & Co. huller was an infringement upon the rights secured by letters-patent to John C. Birdsell, and that they would be liable to the Birdsell Manufacturing Company in damages, if they purchased and used the McDonald & Co. huller—he was uniformly met with the reply that McDonald & Co. would guarantee them against any trouble or damage resulting to the Birdsell Manufacturing Company. Several parties whom he (affiant) has conversed with on the subject have told him that they had a guaranty from said Smith that they should meet with no trouble. Among those who have so conversed with him are John Freese and Christian Freese, of Washington township, in Defiance county, Ohio, and one Allman, who resides in the northwest part of said Williams county. There are other parties that he might mention, if he could recollect their names, but cannot at this moment, who have had similar conversations with him.

He knows that such representations and guarantees of the agents of said McDonald did very materially hurt the sale of the clover-huller manufactured by the Birdsell Manufacturing Company. He gets this knowledge mainly from parties who purchased the clover-huller manufactured by McDonald & Co.; that some of the parties who gave him such information were parties to whom he had tried to sell the Birdsell huller; others, parties with whom he had tried to settle the damages with for the infringement upon the said Birdsell patent.

ABIJAH H. CORBETT.

Sworn to by said Abijah H. Corbett before me, and by him subscribed in my presence, this 24th day of January, A.D. 1878.

MILTON B. PLUMMER,

[L. S.]

Notary Public.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act of Congress authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Threshing and Hulling Clover.

STATE OF OHIO, *County of Williams, ss:*

Personally appeared before me, a notary public in and for said county, and as such duly authorized to administer oaths for general purposes, on this 24th day of January, A. D. 1878, at Bryan, in said county of Williams, Charles C. Hubbell, whose post-office address is Bryan, Ohio, and who being by me first duly sworn, as hereinafter certified, deposes and says: That he moved to said Bryan about ten years ago, and has resided there ever since; that he has the most of the time since he first moved to Bryan been engaged in the business of selling agricultural implements; that about the spring of A. D. 1869 he was employed with one Jefferson Miller, a hardware merchant in said Bryan, in the agency of selling the Birdsell Manufacturing Company's clover-huller, manufactured at South Bend, State of Indiana, controlling the sales of said huller in the counties of Williams and Defiance, in said State of Ohio, and from that time to the present been more or less engaged in the business of selling said hullers in said counties of Williams and Defiance; that about 1869, one John W. Smith, of said Bryan, became a local agent, and afterwards a general agent, to sell the Wooster clover-huller, manufactured by McDonald & Co. of Wooster, State of Ohio, and continued to be the agent of said McDonald & Co. from that date so long as they continued to do business, and continues still their assignee's or trustee's agent in closing up their business; that said Smith was a very active agent for said McDonald & Co., and sold a large number of their clover-hullers; that about 1870, at the request of said Birdsell Manufacturing Company, he (affiant) served a printed notice on said Smith, as such agent of McDonald & Co., that the clover-huller was an infringement on the patent of John C. Birdsell, one of the firm of said Birdsell Manufacturing Company and patentee of said Birdsell Manufacturing Company's clover-huller, and notifying him, the said Smith, as such agent, that he must not sell any more of said Wooster hullers, and if he did he would be held responsible by said Birdsell Manufac-

turing Company for so doing; the said Smith replied, among other things, that he was not afraid of said Birdsell Manufacturing Company, and should continue to sell all Wooster hullers he could; that he did thereafter continue to sell said hullers for said McDonald & Co., and sold a good many of their hullers after that, and continued to sell what he could so long as said Wooster huller was being manufactured, and until said company failed in business; that said Smith, as such agent for said McDonald & Co., gave and continued to give, while agent engaged in selling, guarantees to purchasers of said Wooster huller, against any and all damages that might result or accrue to said Birdsell Manufacturing Company on account of the letters-patent of the said John C. Birdsell on account thereof, and, to the knowledge of this affiant, did sell said Wooster huller to parties this affiant had about induced to purchase said Birdsell Manufacturing Company's huller, by so guaranteeing the said Wooster huller to be no infringement, and that he would indemnify the party so purchasing against any and all damages resulting from the use of the huller he sold; that one such party is George Fisher of Milford township, Defiance county, Ohio; that said Fisher so told him (affiant); another such man is one Allman of North West township, in said county of Williams, and another man, whose name he does not remember, but who resides in the north part of said county of Williams; that in a conversation with said Smith, about the middle of last January, in Bryan, he stated to him that he did guarantee to parties that he sold said Wooster huller to that he would stand between them and all harm that should result from the said Birdsell Manufacturing Company on account of his selling said Wooster huller to such parties, and that he was going to do it; that he had his lawyer hired to look after that matter in the United States courts, and that it should not cost one of the parties who purchased a Wooster huller of him one cent; that about 1870 he received a very saucy and threatening letter from McDonald & Co., directed personally to him, saying, among other things, that they would prosecute him if he continued to state that their huller was an infringement upon the said Birdsell huller, but that he has lost said letter.

Affiant says, that said Wooster huller, manufactured by said McDonald & Co., is a double-cylinder huller, and is substantially and in its effect constructed like the Birdsell Manufacturing Company's huller.

Affiant further says, that, to his certain knowledge, said Smith has prevented men who purchased the Wooster huller

of him from settling with said Birdsell Manufacturing Company, and that he has heard him state that he did prevent men from settling, and intended to do so. What he meant was, the damages that said Birdsell Manufacturing Company should sustain, and have a right to recover of McDonald & Co., for infringements of their patents, if any.

CHARLES C. HUBBELL.

Sworn to by the said Charles C. Hubbell before me, and
by him subscribed in my presence, this 24th day of January,
A. D. 1878.

MILTON B. PLUMMER,
Notary Public.

[L. S.]

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

DISTRICT OF COLUMBIA, *Washington, ss:*

Before me, a justice of the peace in and for said District of Columbia, personally appeared John H. Baker, and being by me duly sworn, deposes and says:

I am about 46 years of age; reside at Goshen, in the State of Indiana, and by occupation am at present member of Congress from the Thirteenth District of Indiana.

I am acquainted with the petitioner, John C. Birdsell of South Bend, Indiana.

About the month of August, 1872, when Mr. Birdsell was about to commence suits against McDonald & Co. *et al.* and the Ashland Machine Company *et al.* in the United States Circuit Court for the Northern District of Ohio, for infringement of his letters-patent for machinery for hulling and threshing clover, I was employed by him as counsel to go with him to visit the said infringing parties, and others, to induce them to settle with him without litigation.

While in conversation with Angus McDonald, of said McDonald & Co., at Wooster, Ohio, he, the said McDonald, remarked, in a defiant manner, in substance, that if Mr. Birdsell dared to bring suit against them, they had enough money and would law him with it until they used him up, and until his patent would expire, and then they would have things their own way in the clover-machine business. In support of his threat, Mr. McDonald showed his commercial rating to be about \$250,000, and that of one of the company to be about \$500,000, as nearly as I now recollect, and they utterly refused to settle on any terms whatever.

JOHN H. BAKER.

Subscribed and sworn to before me, this 2d day of February,
A. D. 1878.

B. W. FERGUSON, [SEAL]
Justice of the Peace for the District of Columbia.

STATE OF WISCONSIN, *County of Milwaukee, ss:*

Before me, a notary public in and for said county, personally appeared William F. Whitney, who being duly sworn, deposes and says: That heretofore—to wit, in and during the years 1871 and 1872—the deponent was the authorized agent for the sale of agricultural machinery for the Glen & Hall Manufacturing Company of Rochester, in the State of New York; that said company was, among other things, engaged in the manufacture and sale of a combined clover huller, thresher, and separator, and that, during deponent's said agency, he learned, by rumors coming to him, that John C. Birdsell claimed and insisted that the combined clover separator, huller, &c., so manufactured by said Glen & Hall Manufacturing Company, were an infringement on letters-patent granted to him, the said John C. Birdsell, by the United States of America; that after hearing such rumors, as aforesaid, the deponent saw one Eugene Glen, a member of said Glen & Hall Manufacturing Company, and that the deponent stated to said Glen, substantially, the rumors that had reached him, and his information in regard to said infringement, and also stated his (deponent's) fears that he would be put to some inconvenience by said John C. Birdsell, or his representatives, on account of said alleged infringements by said Glen & Hall Manufacturing Company; and that deponent then and there asked said Glen to assure, warrant, or indemnify him, the deponent, against loss or damage on account of said alleged infringements, and on account of deponent's action as agent of the said Glen & Hall Manufacturing Company as aforesaid, in selling the clover machines made by them as aforesaid; and that said Eugene Glen did then and there promise, for himself and for the Glen & Hall Manufacturing Company, to warrant, protect, and indemnify the deponent against any damage or loss on account of such sales as their agent aforesaid.

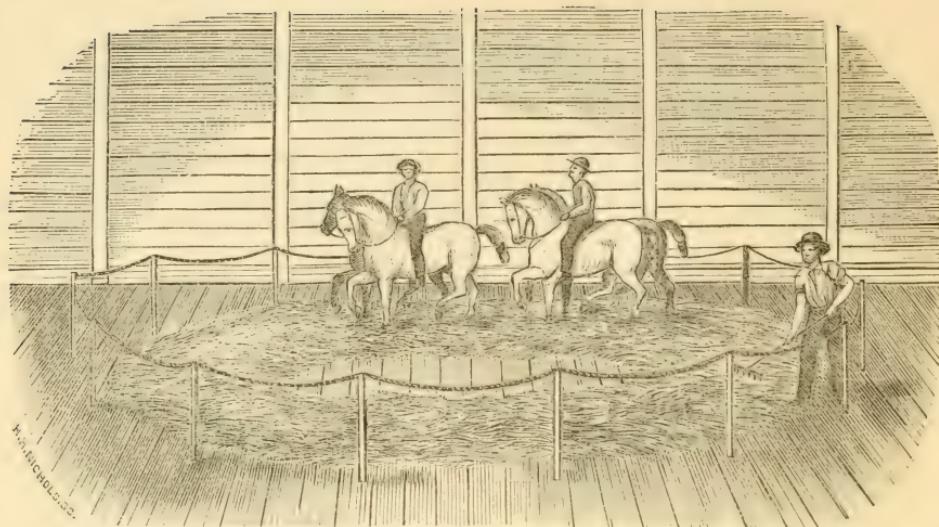
Deponent further says, that he had at that time, and thereafter, until about the time the said Glen & Hall Manufacturing Company discontinued their business as manufacturers aforesaid, the property of the said company, amounting to some hundreds of dollars, in his possession as their agent aforesaid, and that deponent did, under the circumstances, consider himself indemnified by the said company against loss or damage by reason of the claims of said John C. Birdsell, for infringement of his letters-patent as aforesaid, in case any such damage should be caused the deponent by reason of any

suit or suits at law, or judgments obtained against deponent in any court, in consequence of his sales of said combined clover thresher and huller, for the Glen & Hall Manufacturing Company, as aforesaid. And further, this deponent says not.

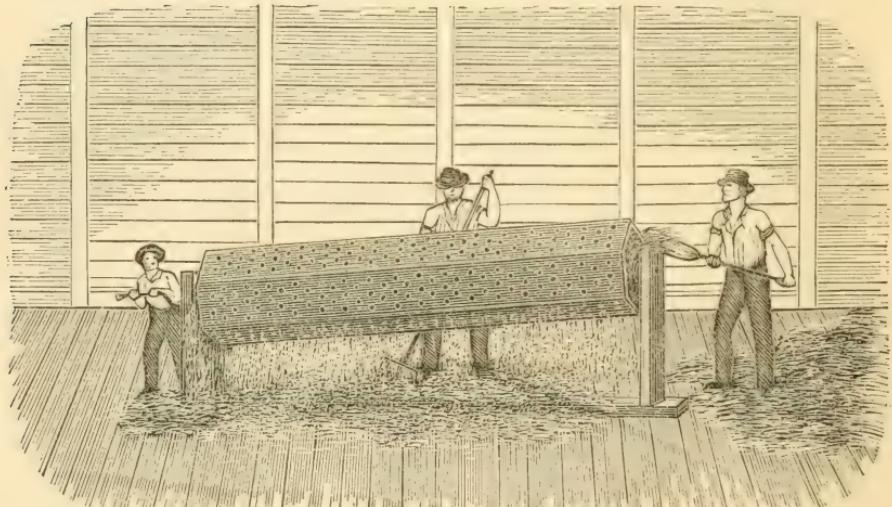
W. F. WHITNEY.

Subscribed and sworn to before me, this 28th January, 1878.

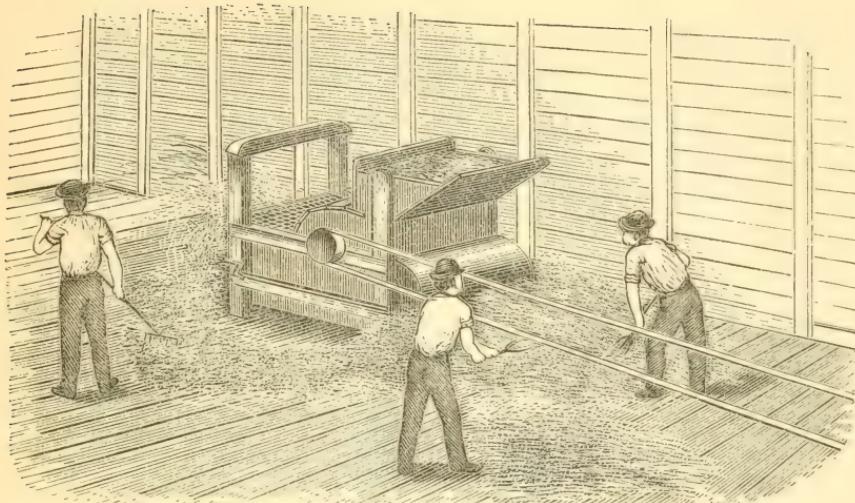
GEO. C. KELLER, [SEAL]
Notary Public, Milwaukee Co., Wisconsin.



THIS ENGRAVING REPRESENTS
ONE METHOD OF THRESHING CLOVER FROM THE STRAW
PRIOR TO 1859.

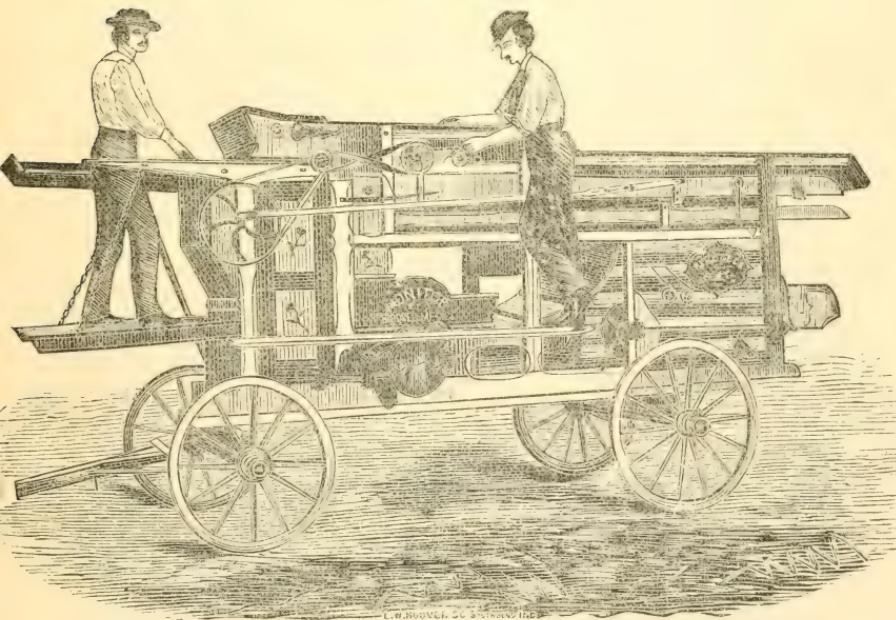


THIS ENGRAVING REPRESENTS
A BOLT USED TO SEPARATE CHAFF FROM THE STRAW OR STALKS
PREPARATORY TO ITS BEING HULLED.



THIS ENGRAVING REPRESENTS

THE SINGLE RASP HULLER FOR HULLING CLOVER FROM THE CHAFF, USED BY THE PATENTEE PRIOR TO THE INVENTING OF THE COMBINED CLOVER THRESHER AND SEPARATOR.



THIS ENGRAVING REPRESENTS

J. C. BIRDSSELL'S CLOVER HULLING AND THRESHING MACHINE.

PATENTED, 1858; REISSUED, APRIL 8, 1862.

No. 1,299.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act authorizing the Commissioner of Patents to hear and determine his Application for Extension of his Letters-Patent for Machine for Hulling and Threshing Clover.

STATE OF OHIO, *County of Cuyahoga, ss:*

Before me, a notary public in and for said county and State, personally appeared Zalmon S. Stocking, and being duly sworn, he deposes and says: I reside at Cleveland, in the State of Ohio; am 58 years of age, and by occupation am interested in the manufacture of clover machinery. I am acquainted with the invention in clover machinery as secured to John C. Birdsell by his reissued letters-patent No. 1299, upon which this petition is based. This invention worked a great revolution in the art of getting out clover-seed. Before his invention it required separate operations and several times handling. Clover-heads were frequently stripped from the stems in the field, then trampled out by horses on the barn-floor to separate the seed. The heads, chaff, and seed were then swept up, put through a bolt to separate the stems, and the unbroken heads, the chaff, and the seed were then shoveled several times through a huller to get out and clean the seed. Sometimes, however, the seed was gathered as follows: The clover was cut with the stems or hay; this was then passed through an ordinary grain-thresher to separate the heads from the stems; the former was then raked and bolted to remove the longer stems, and the product of the bolt was passed through a huller to get out and clean the seed. Then came Mr. Birdsell's invention, which, with one single handling, did the whole work of threshing, separating, hulling, and cleaning and gathering the seed, all at one single, continuous operation, and with one passage through the machine. It enabled the operators to get out four or five times the amount of seed in a given time that could formerly be gotten out in the same time. It also dispensed with many hands. It enabled the farmer to have done in the field what formerly had to be done on a barn-floor, and thereby saved the time and trouble of hauling. The result was to reduce the cost of getting out clover-seed at least one or two dollars per bushel. This result was prolific of other very great results, to wit: clover-seed was brought within the reach of all; wastage was prevented, and

the yield correspondingly increased. Consumers greatly multiplied, and the raising of clover-seed, as a special industry, was established, and the seed, as an article of commerce, is raised in various sections for shipment all over the world. It brought within the range of farmers a crop productive in its nature, not interfering with other crops, and furnished him with the most efficacious means of enriching his soil, by turning under the second growth after a crop of seed had been gathered.

In testimony whereof, I have hereunto set my hand, this fourth (4th) day of February, A. D. 1878.

ZALMON S. STOCKING.

Sworn to and subscribed before me, a notary public in and for the county of Cuyahoga, and State of Ohio, this fourth day of February, A. D. 1878.

[L. S.]

JNO. CROWELL, Jr.,
Notary Public.

BEFORE THE CONGRESS OF THE UNITED STATES.

IN THE MATTER OF JOHN C. BIRDSSELL, Petitioner for an Act authorizing the Commissioner of Patents to hear and determine his Application for Letters-Patent for Machinery for Hulling and Threshing Clover.

STATE OF NEW YORK, *County of Richland, ss.*

Before me, a notary public in and for said State and county, personally appeared John B. Croft, and being by me duly sworn, he deposes and says: I reside at Mansfield, Ohio; am 41 years of age, and am by occupation dealer in agricultural implements, and as such have my own agents in numerous places in the Western States. During several years since 1872, I acted as the agent of the Hagerstown Agricultural Implement Manufacturing Company of Hagerstown, Maryland, in selling and disposing of their combined clover machines, and by myself and my numerous agents did sell a large number of the said Hagerstown machines. In making such sales, owing to the cautions that had been spread by the Birdsell Manufacturing Company amongst nearly all the farmers and dealers in the country, we found it impossible to make sales of machines except by guaranteeing purchasers against all damages they might be liable for, by reason of the machine

being an infringement upon the Patent No. 1299, granted to John C. Birdsell. I was therefore instructed by the Hagerstown Company, and I instructed in like manner my sub-agents, to issue the said guarantees, in order to effect sales of the machines of the said Hagerstown Agricultural Implement Manufacturing Company, and the machines were sold in that way. I am aware that the said John C. Birdsell and Birdsell Manufacturing Company have, since that time, obtained a decree for infringement against the said Hagerstown Company in the United States Circuit Court at Baltimore, Maryland. And further deponent saith not.

JOHN B. CROFT.

Sworn and subscribed before me, at Mansfield, Ohio, this 5th day of February, A. D. 1878.

[L. S.]

ISRAEL S. DONNELL,
Notary Public, Richland Co., Ohio.

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